



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R01-RCRA-2022-0421; FRL- 10012-02-R1]

Maine: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Maine has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Maine’s application and has determined that these revisions satisfy all requirements needed to qualify for final authorization. Therefore, we are taking direct final action to authorize the State’s changes. In the “Proposed Rules” section of this issue of the *Federal Register*, the EPA is also publishing a separate document that serves as the proposal to authorize these revisions. Unless the EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Maine’s revisions to its hazardous waste program will take effect.

DATES: This final authorization will become effective on *[Insert date 60 days after the date of publication in the Federal Register]*, unless the EPA receives adverse written comments by *[Insert date 30 days after the date of publication in the Federal Register]*. If the EPA receives any such comment, the EPA will publish a timely withdrawal of this direct final rule in the *Federal Register* and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R01-RCRA-2022-0421**, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management, UST and Pesticides Section; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07-1), Boston, MA 02109-3912; telephone number: (617) 918-1647; e-mail address: leitch.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in Maine, including the issuance of

new permits implementing those requirements, until Maine is granted authorization to do so.

B. What decisions has the EPA made in this rule?

On June 8, 2022, Maine submitted a complete program revision application seeking authorization of revisions to its hazardous waste program. The EPA concludes that Maine's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C 6926(b), and 40 CFR part 271. Therefore, the EPA grants final authorization to Maine to operate its hazardous waste program with the revisions described in its authorization application, and as listed below in Section G of this document.

The Maine Department of Environmental Protection (MDEP) has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of today's authorization decision?

This decision serves to authorize Maine for the revisions to its authorized hazardous waste program described in its authorization application. These changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Maine will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Maine are already effective under State law

and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this issue of the *Federal Register* that serves as the proposal to authorize Maine's program revisions. The EPA did not publish a proposal before today's rule because the EPA views this as a routine program change and does not expect comments that oppose this approval. The EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, the EPA will withdraw today's direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. The EPA will base any further decision on the authorization of Maine's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. The EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If the EPA receives comments that oppose only the authorization of a particular revision to Maine's hazardous waste program, the EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The *Federal Register* withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Maine previously been authorized for?

Maine initially received final authorization effective May 20, 1988 (53 FR 16264) to implement the RCRA hazardous waste management program. The EPA granted authorization for revisions to Maine's regulatory program on the following dates: June 24, 1997, effective August 25, 1997 (62 FR 34007); and November 9, 2004, effective January 10, 2005 (69 FR 64861); and

June 26, 2020, effective immediately (85 FR 38330).

G. What revisions is the EPA proposing with this proposed action?

On June 8, 2022, Maine submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Maine seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists Maine's analogous requirements that are being recognized as no less stringent than the analogous Federal requirements.

Maine's regulatory references are to the Hazardous Waste Management Rules, 06-096 of the Code of Maine Rules (CMR), Chapters 850-858, as amended effective October 6, 2021, and to the Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR, Chapter 2, as amended effective June 9, 2018. Maine's statutory authority to operate its hazardous waste program is found in the Hazardous Waste, Septage, and Solid Waste Management Act, 38 M.R.S. sections 1301 through 1319-Y.

The EPA proposes to determine, subject to public review and comment, that Maine's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA is proposing to authorize Maine for the following program revisions:

Table 1. Maine's Analogs to the Federal Requirements

Federal Requirement	Federal Register Page and Date	Analogous State Authority
Checklist (CL) 71: Mining Waste Exclusion II	55 FR 2322; January 23, 1990.	06-096 Code of Maine Rules (C.M.R.) Ch. 857.3C and 857.7A(1)(a). More stringent provisions: Ch. 850.3(A)(4)(a)(ix) NOTE
CL 77: HSWA Codification Rule, Double Liners; Correction	55 FR 19262; May 9, 1990.	06-096 C.M.R. Ch. 854.9(B)

Federal Requirement	Federal Register Page and Date	Analogous State Authority
CL 79: Organic Air Emission Standards for Process Vents and Equipment Leaks	55 FR 25454; June 21, 1990.	06-096 C.M.R. Ch. 850.3(A)(2); Ch. 854. 6(C)(3), (C)(5), (C)(10(b), (C)(14), and (C)(20); Ch. 855. 9(A)(3), (A)(5), (A)(10)(b), (A)(14), and (A)(18); Ch. 856.10(B) and 10(B)(21).
CL 82: Wood Preserving Listings	55 FR 50450; December 6, 1990.	06-096 C.M.R. Ch. 850.3(C)(2)(a) and Appendix VII and VIII; Ch. 851.13(G); Ch. 854.12(B)(1) and 854.15; Ch. 855.9(D) and 855.9(L); and Ch. 856.10(L). More stringent provisions: 06-096 C.M.R. Ch. 854.15(A)(2) and 854.15(B)(1)
CL 87: Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment	56 FR 19290; April 26, 1991.	06-096 C.M.R. Ch. 854.6(C)(20); Ch. 855.9(A)(3), 855.9(A)(10)(b), 855.9(A)(18); and Ch. 856.10(B)(21).
CL 90: Mining Waste Exclusion III	56 FR 27300; June 13, 1991.	More stringent provisions: 06-096 C.M.R. Ch. 850.3(A)(4)(a)(ix) NOTE
CL 92: Wood Preserving Listings; Technical Corrections	56 FR 30192; July 1, 1991.	06-096 C.M.R. Ch. 850.3(C)(2)(a); Ch. 851.8(B)(2); 851.8(B)(3); and 851.13(G); Ch. 854.15(B); Ch. 855.9(L); and Ch.856.10(L).
CL 97: Exports of Hazardous Waste; Technical Correction	56 FR 43704; September 4, 1991.	06-096 C.M.R. Ch. 857.7(D).
CL 100: Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units	57 FR 3462; January 29, 1992.	06-096 C.M.R. Ch. 854.3(HH); 854.6(C)(7); 854.8(B); 854.8(C); 854.8(H); 854.9(B); 854.9(C); 854.9(E); 854.9(G); 854.11(B) and (C); 854.12(B) and (C); Ch. 855.9(A)(5); 855.9(A)(7); 855.9(A)(10)(b); 855.9(B), (E), (F), and (H); Ch. 856.10(C) and 856.10(F). More stringent provisions: Ch. 854.8(B)(1) and (2); 854.9(B)(1), 854.9(B)(2)(b); 854.9(B)(5); 854.9(C)(2); 854.11(B)(1), (3), (4), (5) and (6); and 854.19.
CL 113, 113.1, 113.2: Consolidated Liability Requirements	53 FR 33938; September 1, 1988; 56 FR 30200; July 1, 1991; 57 FR 42832; September 16, 1992.	06-096 C.M.R. Ch. 854.6(C)(17); and Ch. 855.9(A)(17). More stringent provisions: Ch. 854.6(C)(17)(e)

Federal Requirement	Federal Register Page and Date	Analogous State Authority
CL 118: Liquids in Landfills II	57 FR 54452; November 18, 1992.	06-096 C.M.R. Ch. 854.6(C)(3) and 854.8(C)(5); Ch. 855.9(A)(3) and 855.9(H). More stringent provisions: Ch. 854.8(C)(5)(a).
CL 120: Wood Preserving; Amendments to Listings and Technical Requirements	57 FR 61492; December 24, 1992.	06-096 C.M.R. Ch. 850.3(C)(3); Ch. 854.15. More stringent provisions: Ch. 854.15(B)(1) and Ch. 855.9(L).
CL 131: Recordkeeping Instructions; Technical Amendment	59 FR 13891; March 24, 1994.	06-096 C.M.R. Ch. 854.6(C)(10); and Ch. 855.9(A)(10).
CL 140: Carbamate Production Listings	60 FR 7824; February 9, 1995 as amended April 17, 1995 (60 FR 19165) and May 12, 1995 (60 FR 25619).	06-096 C.M.R. Ch. 850.3(C)(3), 850.3(C)(4)(e), 850.3(C)(4)(f); 850, Appendix VII and VIII.
CL 148: RCRA Expanded Public Participation	60 FR 63417; December 11, 1995.	06-096 C.M.R. Ch 2.2(A); 2.10(B)(5); 2.13(A); 2.16; Ch. 856.5, 856.10(A)(12), 856.10(A)(15) and (16), 856.10(B)(20), 856.10(D) and 856.16.
CL 152: Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision	61 FR 16290; April 12, 1996.	06-096 C.M.R. Ch.851.4(B); Ch. 853.8(C), 853.11(G) and 853.11(I); Ch. 854.6(C)(14) and 854.8(C)(2); Ch. 855.9(A)(2), 855.9(A)(14) and 855.9(N); Ch. 857.7(D), 857.8(C) and 857.9(D); Ch. 858.7(C).
CL 153: Conditionally Exempt Small Quantity Generator (CESQG) Disposal Options under Subtitle D)	61 FR 34252; July 1, 1996.	More stringent provision 06-096 C.M.R. Ch 850.3(A)(5).
CL 156: Military Munitions Rule	62 FR 6622; February 12, 1997.	06-096 C.M.R. Ch. 851.13(F); Ch. 853.10(C); Ch. 854.6(C)(15), 854.16(B)(2), 854.16(C)(3) and 854.16(D); Ch. 855.3 and 855.9(M); Ch. 856.5(C), 856.18(A)(4) and 856.18(B); Ch. 857.3(K), 857.5 and 857.10.
CL 159: Conformance with the Carbamate Vacatur	62 FR 32974; June 17, 1997.	06-096 C.M.R. Ch. 850.3(C)(3), 850.3(C)(4)(f), App. VII and App. VIII; Ch. 852.13 and 852.14(A).
CL 167E: Bevill Exclusion Revisions and Clarifications	63 FR 28556; May 26, 1998.	06-096 C.M.R. Ch. 850.3(A)(4).

Federal Requirement	Federal Register Page and Date	Analogous State Authority
CL 169: Petroleum Refining Process Listings	63 FR 42110; August 6, 1998, as amended October 9, 1998 (63 FR 54356).	06-096 C.M.R. Ch. 850.3(C)(3) and App. VII; Ch. 852.13 and 852.14.
CL 179: Land Disposal Restrictions Phase IV - Technical Corrections and Clarifications to Treatment Standards	64 FR 25408; May 11, 1999.	06-096 C.M.R. Ch. 851.4(A), 851.8(B)(5), 851.9(G); and Ch. 852.3(D), 852.3(I), 852.10.
CL 182: Hazardous Air Pollutant Standards for Combustors	64 FR 52828; September 30, 1999, as amended November 19, 1999 (64 FR 63209).	06-096 C.M.R. Ch. 854.13(A)(2), 854.13(B)(5), 854.16(B)(1); Ch. 855.9(A)(16), 855.9(I); Ch. 856.10(D)(1), (2) and (3), and 856.11(A)(6).
CL 183: Land Disposal Restrictions Phase IV- Technical Corrections	64 FR 56469; October 20, 1999.	06-096 C.M.R. Ch. 850.3(C)(3); Ch. 851.8(B)(5) and 851.8(G); Ch. 852.10, 852.14(A) and 852.14(D).
CL 187: Petroleum Refining Process Wastes – Clarification	64 FR 36365; June 8, 2000.	06-096 C.M.R. Ch. 850.3(C)(2)(a).
CL 189: Chlorinated Aliphatics Production Listings	65 FR 67067; November 8, 2000.	06-096 C.M.R. Ch. 850.3(C)(3), 850, Appendix VII and VIII; Ch. 852.13 and 852.14(A).
CL 195: Inorganic Chemical Manufacturing Listings	66 FR 58257; November 20, 2001, as amended April 9, 2002 (67 FR 17119).	06-096 C.M.R. Ch. 850.3(C)(3) and 850, Appendix VII; Ch. 852.13 and 852.14.
CL 198: Hazardous Air Pollutant Standards for Combustors: Corrections	67 FR 6968; February 14, 2002.	06-096 C.M.R. Ch. 854.13 and Ch. 856.10(D).
CL 199: Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste	67 FR 11251; March 13, 2002.	06-096 C.M.R. Ch. 850.3(A)(4)(a).
CL 200: Zinc Fertilizer Rule	67 FR 48393 July 24, 2002.	06-096 C.M.R. Ch. 850.3(A)(4)(a) and Ch. 852.14(A).
CL 206: Nonwastewaters from Dyes and Pigments	70 FR 9138; February 24, 2005.	06-096 C.M.R. Ch. 850.3(C)(3) and 850, Appendix VII and VIII; Ch. 852.13 and 852.14.
CL 207: Uniform Hazardous Waste Manifest Rule	70 FR 10776; March 4, 2005.	06-096 C.M.R. Ch. 850.3(A)(7)(e); Ch. 851.8(A)(4) and 851.8(A)(5); Ch. 854.6(C)(13); Ch. 855.9(A)(13) & 855.9(A)(15); Ch. 857.3(C), (I) and (J), 857.5(A), 857.7(B), 857.7(D), 857.7(I), 857.8(A)(1), 857.8(C), 857.8(E), 857.8(I), 857.9, 857.9(A)(3), 857.9(A)(7), 857.9(B) and 857.9(D).

Federal Requirement	Federal Register Page and Date	Analogous State Authority
CL 222: OECD Requirements; Export Shipments of Spent Lead-Acid Batteries	75 FR 1236; January 8, 2010.	06-096 C.M.R. Ch. 853.8(C); Ch. 854.6(C)(2) and 854.6(C)(15); Ch. 855.9(A)(2); Ch. 857.7(D), 857.8(C) and 857.9(D); Ch. 858.12.
CL 225: Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances	75 FR 78918; December 17, 2010.	06-096 C.M.R. Ch. 850.3(C)(4) and 850, Appendix VIII.
CL 232: Revisions to the Export Provisions of the Cathode Ray Tube Rule	79 FR 36220; June 26, 2014.	06-096 C.M.R. Ch. 857.7(D)(1) and (2); Ch. 858.5(A); 858.7(O)(1) and (2).
CL 235: Disposal of Coal Combustion Residuals from Electric Utilities	80 FR 21302; April 17, 2015.	06-096 C.M.R. Ch. 850.3(A)(4)(a)(x).
CL 236: Imports and Exports of Hazardous Waste	81 FR 85696; November 28, 2016, as amended August 29, 2017 (82 FR 41015) and August 6, 2018 (83 FR 38263).	06-096 C.M.R. Ch. 850.3(A)(4)(a)(xii) and 850.3(A)(4)(b)(iii); Ch. 851.4(B); Ch. 853.8(C) and 853.11(O); Ch. 854.6(C)(2) and 854.6(C)(15); Ch. 855.9(A)(2) and (15); Ch. 857.7(D), 857.7(D)(1), 857.7(D)(2), 857.8(C), 857.9(D) and (E); Ch. 858.7(C), 858.7(O), 858.8(A), 858.9(A), 858.12 and 858.13.
CL 238: Confidentiality Determinations for Hazardous Waste Export and Import Documents	83 FR 60894; December 26, 2017.	06-096 C.M.R. Ch. 857.7(D), 857.7(D)(2) and 857.7(D)(3); Ch. 858.7(O)(3).
Special Consolidated Checklist for the Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (Checklists: 154, 154.1, 154.2, 154.3, 154.4, 154.5, 154.6, 163, 177)	59 FR 62896; December 6, 1994, as amended May 19, 1995 (60 FR 26828), September 29, 1995 (60 FR 50426), November 13, 1995 (60 FR 56952), February 9, 1996 (61 FR 4903), June 5, 1996 (61 FR 28508), November 25, 1996 (61 FR 59932). 62 FR 64636; December 8, 1997, and 64 FR 3382; January 21, 1999.	06-096 C.M.R. Ch. 851.8(B)(6); Ch. 854.6(C)(3), 854.6(C)(5), 854.6(C)(9)(b), 854.6(C)(13), 854.6(C)(20), 854.9(C)(5), 854.12(B)(1) 854.12(C)(9), and 854.16(B)(1); Ch. 855.9(A)(3), 855.9(A)(5), 855.9(A)(9)(b), 855.9(A)(13), 855.9A (17), 855.9(A)(18), 855.9(C), 855.9(D) and 855.9(E); Ch. 856.10(B)(3), 856.10(C)(1), 856.10(E), 856.10(H) and 856.13(A)(7).

Federal Requirement	Federal Register Page and Date	Analogous State Authority
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (Checklists 231 and 239)	79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018.	06-096 C.M.R. Ch. 854.6(C)(14) and 854.6(C)(20); Ch. 855.9(A)(14) and 855.9(A)(18); Ch. 857.3(D), 857.3(E), 857.3(I), 857.3(L), 857.3(O), 857.5(A), 857.5(B), 857.5(E), 857.5(F), 857.5(G), 857.5(I), 857.5(H), 857.7(A)(1)(e), 857.8(A)(1), 857.8(A)(5), 857.8(C), 857.8(D), 857.8(E), 857.8(F), 857.8(G), 857.8(H), 857.8(I), 857.9(A) and 857.9(C). More stringent provisions: Ch. 857.8(B) and 857.9(A)(3)(d).
Recycled Used Oil Management Standards (40 CFR 261.6(a)(4), the recycled used oil exclusion)	57 FR 41566; September 10, 1992.	06-096 C.M.R. Ch. 850.3A(4)(a)(xxv).

EPA is also authorizing Maine for the land disposal restrictions (LDR) in 40 CFR 268.30. In addition, EPA is authorizing Maine for revisions to previously authorized rules, they include: 850.3(A)(4)(a)(xxiv) - clarifying the applicability of the tolling agreement or the need to overcome the rebuttable presumption if there is no tolling agreement in the used cutting oil exclusion; 858.4(N) - clarifying the definition of “recycling facility” to mean a destination facility as defined in 40 CFR 273.9 or a facility authorized to perform the universal waste recycling activity; 858.5(A) - clarifying that the intentional breakage of universal waste is considered treatment; and 854.8(A)(3)(a), 854.9(A)(2), 854.10(A)(1)(b), 854.11(A)(2) and 854.16(A)(1)(a) – these revisions, which incorporate drinking water guidelines, support the implementation of other provisions of the Maine hazardous waste program, as they are utilized for the limited purpose of determining whether waste has migrated to surface or groundwaters.

EPA cannot delegate certain federal requirements associated with the federal manifest registry system, the electronic manifest system, and international shipments (*i.e.*, import and export provisions). Maine has adopted these requirements and appropriately preserved the EPA's

authority to implement them (see 06-096 C.M.R. Ch. 857, sections 3(D), 3(E), 3(L), 3(O), 5(F)(2), 5(G), 7(D), 8(A)(1)(b), 8(C), 9(A)(6) and 9(D); and Ch. 858 sections 7(O) and 13).

There are several Federal rules that have been vacated, withdrawn, or superseded. As a result, authorization of these rules may be moot. However, for purposes of completeness, these rule checklists are included here with an explanation as to the rule's status in Maine. These checklists include: CL 216: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthetic Gas (73 FR 57, January 2, 2008); CL 221: Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); CL 224: Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010); and CL 234: Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015) – CLs 216, 221, and 224 have been vacated. CL 234 implements the vacatur of these provisions. Maine did not adopt the exclusions contained in CLs 216, 221, or 224; therefore, the adoption of CL 234 in Maine would be inconsequential. Maine's authorized program continues to be equivalent to and no less stringent than the Federal program without having to make any conforming changes pursuant to these rule checklists.

H. Where are the revised State rules different from the Federal rules?

When revised State rules differ from the Federal rules in the RCRA State authorization process, EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

1. Maine requirements that are Broader in Scope

Maine's hazardous waste program contains certain provisions that are broader than the

scope of the Federal program. These broader in scope provisions are not part of the program the EPA is proposing to authorize. The EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by State law. In 2002, in response to vacaturs ordered by the court, the EPA codified the decision that the Toxicity Characteristic Leaching Procedure (TCLP) may not be used for determining whether manufactured gas plant (MGP) waste is hazardous under RCRA. Maine has not adopted this change; therefore it regulates MGP waste that is determined to be hazardous using the TCLP. State-only wastes make Maine's universe of regulated hazardous waste larger than the EPA's and is therefore broader in scope.

2. Maine's requirements that are More Stringent than the Federal program

Maine's hazardous waste program contains several provisions that are more stringent than the Federal RCRA program. More stringent provisions are part of a federally-authorized program and are, therefore, federally enforceable. Under this action, the EPA would authorize every provision in Maine's program that is more stringent. The provisions of the proposed program revision that are more stringent are noted in Table 1. They include, but are not limited to, the following:

(a) There are several conditional exclusions from the definition of solid waste that Maine has not adopted. They include the exclusions at: 40 CFR 261.4(a)(9), (12), (18), (19) and (20). In addition, there are also exclusions from the definition of hazardous waste that Maine has not adopted. They include the exclusions at 40 CFR 261.4(b)(4) for the co-disposed wastes associated with coal combustion residuals and 40 CFR 261.4(b)(7) for mining wastes. Maine regulates mining waste in Chapter 200. Therefore, Maine's regulations are more stringent with respect to the exclusions listed here.

(b) Maine regulates Conditionally Exempt Small Quantity Generators (CESQGs) more stringently by not allowing CESQG waste disposal in Subtitle D landfills and requiring the waste to be shipped on a hazardous waste manifest.

(c) There are various permitting provisions that Maine has adopted that include more stringent requirements. They include the following: all hazardous waste landfills, surface impoundments and waste piles must have double liners; a leachate detection, collection and removal system must be installed between the top synthetic liner and bottom composite liner in addition to one installed immediately above the top synthetic liner for all land disposal units; the demonstration for disposal of non-hazardous liquid waste in landfills is not allowed; all new drip pads must be constructed with a liner, and a leak detection and collection system; the use of the financial test or corporate guarantee for liability coverage is not allowed; and, Maine did not adopt the provisions in 40 CFR part 266, subpart H, boilers and industrial furnaces are regulated as incinerators in Maine.

(d) Maine's manifest recordkeeping requirements are also more stringent. Records must be kept for the life of the facility if that facility is the ultimate destination for the waste. In addition, for bulk shipments where a manifest has not been received by the designated facility (unmanifested waste), or where a paper manifest or shipping paper is used, the facility must send a copy of the manifest or shipping paper to Maine DEP within 7 days.

(e) Maine did not adopt the 40 CFR part 266, subpart M provisions for military munitions. If munitions are a waste and also a hazardous waste, then they are regulated under Maine's hazardous waste program, except under an emergency response per the provisions in Chapter 856, section 18(A)(4).

(f) The EPA excludes mixtures of non-hazardous waste with certain listed hazardous wastes from the definition of hazardous waste if certain conditions are met. The types of mixtures and associated conditions for exclusion are listed in 40 CFR 261.3(a)(2)(iv) and are generally referred to as the "headworks exemption." Maine does not include these provisions in their regulations but regulates these mixtures as a hazardous waste, see Chapter 850, section 3(A)(3)(b)(ii) and 3(A)(3)(b)(iii).

(g) The EPA conditionally excludes certain wastes generated from the treatment, storage

or disposal of listed wastes from hazardous waste regulation in 40 CFR 261.3(c)(2)(ii). In 40 CFR 261.4(b)(15), the EPA conditionally excludes leachate or gas condensate collected in landfills where certain inorganic chemical manufacturing wastes (namely, K169, K170, K171, K172, K174, K175, K176, K 177, K178, and K181) have been disposed. Maine regulates any waste generated from the handling of a hazardous waste as hazardous waste, including any sludge, spill residue, ash, emission control dust, and leachate, see Chapter 850, section 3(A)(3)(c)(ii).

I. Who handles permits after the authorization takes effect?

Maine will continue to issue permits covering all the provisions for which it is authorized and will administer the permits it issues. EPA will implement and issue permits for any HSWA requirements for which Maine is not yet authorized in the future.

J. How would this action affect Indian Country (18 U.S.C. 115) in Maine?

Maine is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the land of the Houlton Band of Maliseet Indians; the Mi'kmaq Nation; the Passamaquoddy Tribe at Pleasant Point and Indian Township; and the Penobscot Nation. In its Attorney General's statement, as amended on July 25, 2022, the State asserted it has jurisdiction in Indian country pursuant to the Act to Implement the Maine Indian Claims Settlement (Maine Implementing Act), 30 M.R.S. sections 6201 to 6214, and the federal Maine Indian Claims Settlement Act, 25 U.S.C. sections 1721 to 1735 (former codification). Because of the significant time and resources needed to address the State's assertion of authority to regulate activities on Indian country under RCRA, the EPA is not making a determination on such authority as part of the decision. This approach allows EPA to move forward with approval of the State's program elsewhere in the State while it continues to work on the State's assertion in Indian country. EPA is committed to doing so following consultation with the federally recognized Indian tribes in Maine, consistent with Executive Order 13175 (Nov. 6, 2000) and EPA's Policy on Consultation and Coordination with Indian Tribes (May 4, 2011). Therefore,

this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

K. What is codification and will the EPA codify Maine hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Maine's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart U for the authorization of Maine's program at a later date.

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's authorization of Maine's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have

substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in taking this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). "Burden" is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to

the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

September 23, 2022.

Dated:

David W. Cash,
Regional Administrator,
U.S. EPA Region I.

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